

REMARKS

Status of the Application

Without prejudice or disclaimer, Applicants have cancelled claim 5 and amended claims 1, 6, 8, 13, 30, 31, 34, 35, and 36. Applicants have further amended claims 1, 6, 8, 13, 30, 31, 34, 35, and 36 to address some formality issues, as discussed below. Support for the amendments can be found in the originally as-filed claims and , for example, at paragraphs [009] - [012] and [086] - [087] of the specification as filed.

Claims 81-87 are newly added. Support for the new claims can be found, for example, at paragraphs [086] and [087] of the specification as filed.

Accordingly, There is no issue of new matter.

Upon entry of this paper, claims 1, 6, 8, 13, 23, 30-32, 34-36, 41, and 81-87 are pending. Applicants respectfully request that this Reply under 37 C.F.R. § 1.116 be entered, placing the claims in condition for allowance. Applicants submit that the proposed amendments and new claims do not raise new issues or necessitate the undertaking of any additional search of the art, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action.

Claims 35 and 36 are withdrawn due to an earlier restriction requirement. Applicants respectfully request rejoinder of claims 35 and 36 once claims 1 and 8 are found allowable.

Applicants appreciate the Office's indication that previous rejections under 35 U.S.C. § 101, and under U.S.C. § 112, first paragraph, have been withdrawn.

Rejection under 35 U.S.C. § 112, Second Paragraph

The Office rejects claims 1, 5, 6, 18, 23, 30, 32, and 34 as allegedly indefinite for the recitation of a “a first polynucleotide that comprises a nucleotide sequence chosen from a polynucleotide encoding a polypeptide comprising amino acid sequence SEQ ID NO:215”. (Office Action at 3-4.) Specifically, the Office contends that the term “chosen” in claim 1 refers to the election of two or more choices, whereas, in the Office’s view, there is only one choice to choose from in claim 1, e.g., a polypeptide comprising amino acid sequence SEQ ID NO:215. (*Id.*) The Office rejects claims 5, 6, 18, 23, 30, 32, and 34 for their direct or indirect dependence from claim 1. (*Id.*)

Solely to expedite prosecution, Applicants have amended claim 1 to remove the term “chosen.” Applicants’ amendment furthermore does not change the scope of claim 1 in any way, but merely rephrases the grammatical structure of the claim. Claim 5 is also cancelled herein, thereby rendering its rejection moot. Thus, Applicants request withdrawal of this rejection.

Rejections under 35 U.S.C. § 102(b)

A. Claims 1, 5, 6, 8, 13, 18, 23, 30-32, 34 and 41

The Office rejects claims 1, 5, 6, 8, 13, 18, 23, 30-32, 34 and 41 for allegedly lacking novelty over WO 00/55200. (Office Action at 4.) Specifically, the Office interprets claim 1 to comprise a nucleic acid sequence encoding either the full length SEQ ID NO: 215 or *a portion of* SEQ ID NO: 215, and that claim 8 comprises a polypeptide comprising the full length of SEQ ID NO:215 or *a portion of* SEQ ID NO:215. The Office further contends that SEQ ID NO:1 of WO 00/55200 has 43.4% identity with

SEQ ID NO:215. The Office thus concludes WO 0055220 anticipates the claims. (See *Id.*) Applicants respectfully disagree and traverse this rejection.

Applicants respectfully submit that the Office's interpretations of claims 1 and 8 are incorrect. Claims 1 and 8 recite "polypeptide[s] comprising amino acid sequence SEQ ID NO:215." Thus, it is clear to one of ordinary skill in the art that both claims 1 and 8 recite molecules encoding or comprising the full length of SEQ ID NO:215. Because the sequence from WO 00/55200 only shows 43.4% identity with SEQ ID NO:215 according to the Office, it cannot anticipate independent claims 1 and 8 or any of their dependent claims. Accordingly, Applicants request the Office to withdraw this rejection.

B. Claims 1 and 8

The Office rejects claims 1 and 8 under 35 U.S.C. 102(b) as allegedly anticipated by US Application No. 10/301,480 to Wang et al. ("Wang"). (Office Action at 7). Specifically, the Office contends that Wang teaches an isolated nucleotide sequence of SEQ ID NO: 87969 having 988 nucleotides and encoding a polypeptide with 100% sequence homology to the 79 amino acid sequence of SEQ ID NO: 215. Applicants respectfully disagree and traverse this rejection.

As an initial matter, Applicants respectfully submit that Wang does not qualify as a 102(b) reference. Wang, filed November 21, 2002, was published on March 16, 2006. The instant application is the national stage of PCT/US2005/006473, filed March 1, 2005, claiming priority to US Provisional Nos. 60/548,191, filed March 1, 2004, 60/647,013, filed January 27, 2005, and 60/654,229, filed February 18, 2005. Thus Wang at best only qualifies as a 102(e) reference.

Moreover, nucleotide sequence of SEQ ID NO:87969 as downloaded from USPTO website does not have 988 nucleotides. (See attachment.) Instead, it only has 537 nucleotides and does not have the sequence as listed in the Office's Score Search Results.

Nevertheless, to the extent that Wang describes a nucleotide sequence encoding the SEQ ID NO:215 of the instant application, Applicants submit that the current claims, as amended, are novel over Wang. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Objections

Claims 1 and 8

The Office also objected to claims 1 and 8 for lacking either an indefinite article "a" or a definite article "the" in front of the recitation of "amino acid sequence" or "first amino acid sequence." (Office Action at 5.)

Applicants have amended claims 1 and 8 to adopt the Office's suggestions. Accordingly, the objections of claims 1 and 8 should be withdrawn.

Claims 6 and 13

Claim 6 is objected to for referring to "a second nucleotide sequence" for the second polynucleotide without reference to a first nucleotide sequence. (Office Action at 6.) Applicants note that claim 6 depends from claim 1, which recites the "first nucleotide sequence." Thus, antecedent support was found in claim 1 and there was no need to amend claim 6.

In any event, claim 6 has been amended such that this objection is rendered moot.

The Office also objects to claims 6 and 13 because the Office contends that “[i]t is unclear how the second polynucleotide encodes a secretory leader that is not a sequence or polypeptide.” (Office Action at 6.)

Applicants are not clear about the ground upon which the Office’s objection is based, given that it is evident to one of ordinary skill in the art that a “secretory leader” comprises an amino acid sequence. Nonetheless, the claims are amended such that this rejection is rendered moot.

Claims 30, 31 and 34

Claims 30, 31, and 34 are each objected to for using an indefinite article rather than a definite article in referring to an earlier claim. (Office Action at 6.)

Applicants have amended claims 30, 31, and 34 to adopt the Office’s suggestions. Thus, this objection should be withdrawn. Applicants also note that the amendments to claims 30-31 and 34 in no way change the scope of those claims, as one of ordinary skill in the art would recognize that claims 1 and 8 encompass genera of nucleic acid molecules and polypeptide molecules.

Conclusion

In light of the amendments and remarks above, claims 1, 6, 8, 13, 18, 23, 30-32, 34, 41, and 81-87 are in condition for allowance and Applicants respectfully request the timely allowance of those claims and the rejoinder of claims 35 and 36. If the Examiner has any questions regarding the above amendments or remarks, she is invited to contact Applicants’ representative at her convenience.


Application No. 10/591,451
Attorney Docket No. 08940.0038-00000

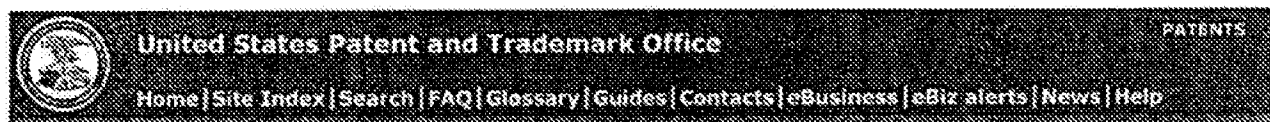
Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: August 10, 2010

By: 
Elizabeth A. Doherty
Reg. No. 50,894



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Viewing Sequence(s): 87969 of 1226818 for Document # US20060057564A1

Search Format

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SEQ ID NO 87969

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TYPE: DNA

ORGANISM: Homo sapien

SEQUENCE: 87969

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